

(3) If removal and replacement of foreign construction material incorporated in a building or work would be impracticable, cause undue delay, or otherwise be detrimental to the interests of the Government, the contracting officer may determine in writing that the foreign construction material need not be removed and replaced. Such a determination to retain foreign construction material does not constitute a determination that an exception to the Buy American Act applies, and this should be so stated in the determination. Further, such a determination to retain foreign construction material does not affect the Government's right to suspend and/or debar a contractor, subcontractor, or supplier for violation of the Buy American Act, or to exercise other contractual rights and remedies, such as reducing the contract price or terminating the contract for default.

(4) If the noncompliance is sufficiently serious, consider exercising appropriate contractual remedies, such as terminating the contract for default. Also consider preparing and forwarding a report for suspension and/or debarment, including findings and supporting evidence in accordance with subpart 9.4, Debarment, Suspension, and Ineligibility. If the noncompliance appears to be fraudulent, consider referring the matter to other appropriate agency officials, such as the officer responsible for criminal investigation and prosecution.

[62 FR 12699, Mar. 17, 1997]

25.207 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 52.225-5, Buy American Act—Construction Materials, in solicitations and contracts for construction inside the United States, except when the clause at 52.225-15, Buy American Act—Construction Materials under Trade Agreements Act and North American Free Trade Agreement, is prescribed.

(b)(1) The contracting officer shall insert the provision at 52.225-12, Notice of Buy American Act Requirement—Construction Materials, in solicitations for construction that contain the

clause at 52.225-5, Buy American Act—Construction Materials.

(2) If the contracting officer determines that insufficient time is available to process a determination regarding the inapplicability of the Buy American Act prior to receipt of offers, the contracting officer shall use the provision with its Alternate I.

(c)(1) The contracting officer shall insert the provision at 52.225-13, Notice of Buy American Act Requirement—Construction Materials under Trade Agreements Act and North American Free Trade Agreement, in solicitations for construction that contain the clause at 52.225-15, Buy American Act—Construction Materials under Trade Agreements Act and North American Free Trade Agreement.

(2) If the contracting officer determines that insufficient time is available to process a determination regarding the inapplicability of the Buy American Act prior to receipt of offers, the contracting officer shall use the provision with its Alternate I.

(d)(1) The contracting officer shall insert the clause at 52.225-15, Buy American Act—Construction Materials under Trade Agreements Act and North American Free Trade Agreement, in solicitations and contracts for construction inside the United States with an estimated acquisition value of \$7,143,000 or more.

(2) For solicitations and contracts for construction inside the United States with an estimated acquisition value of \$6,909,500 or more, but less than \$7,143,000, the contracting officer shall use the clause with its Alternate I.

[62 FR 12699, Mar. 17, 1997, as amended at 63 FR 34076, June 22, 1998]

Subpart 25.3—Balance of Payments Program

25.300 Scope of subpart.

This subpart provides policies and procedures applicable to contracting for supplies, services, or construction for use outside the United States and provides for the use of excess or near-excess foreign currency. The Balance of Payments Program restrictions have been waived with respect to the acquisition, in accordance with subpart 25.4,

25.301

of certain products under the Trade Agreements Act of 1979 and the North American Free Trade Agreement (NAFTA) Implementation Act.

[48 FR 42278, Sept. 19, 1983, as amended at 59 FR 546, Jan. 5, 1994]

25.301 Definitions.

Components (see 25.101).

Domestic end product (see 25.101).

Domestic offer (see 25.101).

Domestic services, as used in this subpart, means services performed in the United States. If services provided under a single contract are performed both inside and outside the United States, they shall be considered domestic if 25 percent or less of their total cost is attributable to services (including incidental supplies used in connection with these services) performed outside the United States.

End product (see 25.101).

Foreign end product (see 25.101).

Foreign offer (see 25.101).

Foreign services, as used in this subpart, means services other than domestic services.

United States (see 25.101).

25.302 Policy.

(a) The Balance of Payments Program is an interim measure imposed to alleviate the impact of Government expenditures on the Nation's balance of international payments. The Balance of Payments Program differs from the Buy American Act in that the Buy American Act applies only to acquisitions for use inside the United States, while the Balance of Payments Program applies to acquisitions for use outside the United States.

(b) Foreign end products or services may be acquired for use outside the United States if any of the following conditions are met:

(1) The estimated cost of the product or service is at or below the simplified acquisition threshold.

(2) Perishable subsistence items are required and the agency head, or a designee, determines that delivery from the United States would significantly impair their quality at the point of consumption.

(3) The agency head, or a designee, determines that a requirement can only be filled by a foreign end product

48 CFR Ch. 1 (10-1-99 Edition)

or service, and that it is not feasible to forgo filling it or to provide a domestic substitute (see 25.108).

(4) The acquisition is for ice, books, utilities, communications, and other materials or services that, by their nature or as a practical matter, can only be acquired or performed in the country concerned and a U.S. Government capability does not exist.

(5) Subsistence items are required specifically for resale in overseas commissary stores.

(6) The acquisition of foreign end products or services is required by a treaty or executive agreement between governments.

(7) Petroleum supplies and their by-products as listed and defined in 25.108 are required.

(8) The end products or services are paid for with excess or near-excess foreign currencies (see 25.304).

(9) The end products or services are mined, produced, or manufactured in Panama and are required by and for the use of United States Forces in Panama.

(c) Contracts shall require use of domestic construction materials (see 25.201) for construction, repair, or maintenance of real property outside the United States, except when the cost of these materials (including transportation and handling costs) exceeds the cost of foreign construction materials by more than 50 percent. A differential greater than 50 percent may be used when specifically authorized by the agency head or a designee.

[48 FR 42278, Sept. 19, 1983, as amended at 60 FR 34758, July 3, 1995; 61 FR 39198, July 26, 1996]

25.303 Procedures.

(a) *Solicitation of offers.* The procedures in this section apply to contracts for supplies and services when the exceptions in 25.302(b) do not apply. Solicitations shall state that information regarding articles, materials, supplies, and services excepted from these procedures is available to prospective contractors upon request. When quotations are obtained orally (see part 13), vendors shall be informed that only domestic end products or services will be acceptable, except for those items that have been excepted or when